

IP 04-1409-C H/K Beaver v Rick's Boatyard  
Judge David F. Hamilton

Signed on 12/14/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

KYLE D. BEAVER,	)	
DOUGLAS R. HEALEY,	)	
ELIZABETH K. YATES,	)	
ANGIE M. TURK,	)	
JAIME FRIEJE-PENLEY,	)	
STACY PENLEY,	)	
	)	
Plaintiffs,	)	
vs.	)	NO. 1:04-cv-01409-DFH-TAB
	)	
RICK'S BOATYARD, INC.,	)	
RICK'S CAFE BOATYARD,	)	
RICHARD L. ALBRECHT,	)	
	)	
Defendants.	)	

The proposed notice does not seem to be adequate to give non-lawyers an adequate explanation of their rights and choices, or to comply with the requirements of Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure. That rule now requires that a notice to a class certified under Rule 23(b)(3) “must concisely and clearly state in plain, easily understood language” the nature of the action,

the definition of the certified class, the class claims, issues or defenses, the fact that a class member may enter an appearance through counsel if the member so desires, the fact that the court will exclude from the class any member who requests exclusion (stating when and how members may elect to be excluded), and the binding effect of a class judgment on class members.

The proposed notice fails to give an adequate explanation of a class member's right to have his or her own counsel appear. The proposed notice also uses the legal jargon "opt-out" without adequately explaining the choice the class members actually face. Also, it would be helpful to explain in a little more detail the specific nature of the wage claims asserted in this case, so that class members might be able to consider whether they believe they were also subjected to the same alleged wrongs.

The Federal Judicial Center has posted suggested forms of class notices to comply with Rule 23. Those forms are the product of testing for comprehension, and they are available on the FJC's website: [www.fjc.gov](http://www.fjc.gov), under the heading "Class Action Notices Page" (last visited Dec. 14, 2005). The suggested form for "full notice" in an employment discrimination case addresses the needed subjects in an easily understood question-and-answer format. That suggested form can easily be adapted to the wage claims in this case (though it is certainly not necessary to establish a new website for case information, as the suggested form contemplates).

Accordingly, the court declines to approve the proposed notice. Plaintiffs' counsel shall submit a revised proposed notice as soon as possible. Defense counsel shall have five days (excluding weekends and holidays) to notify the court of any objections.

So ordered.

Date: December 14, 2005

---

DAVID F. HAMILTON, JUDGE  
United States District Court  
Southern District of Indiana

Copies to:

Kevin W. Betz  
BETZ & ASSOCIATES  
kbetz@kbetzlaw.com

Sandra L. Blevins  
BETZ & ASSOCIATES  
sblevins@betzadvocates.com

Larry D. Furnas  
FURNAS AND ASSOCIATES  
larryfurnas@aol.com